

Advice Summaries

July 2001

Formal written advice provided pursuant to Government Code section 83114 subdivision (b) does not constitute an opinion of the Commission issued pursuant to Government Code section 83114 subdivision (a) nor a declaration of policy by the Commission. Formal written advice is the application of the law to a particular set of facts provided by the requestor. While this advice may provide guidance to others, the immunity provided by Government Code section 83114 subdivision (b) is limited to the requestor and to the specific facts contained in the formal written advice. (Cal. Code Regs., tit. 2, §18329, subd. (b)(7).)

Informal assistance is also provided to persons whose duties under the Act are in question. (Cal. Code Regs., tit. 2, §18329, subd. (c).) In general, informal assistance, rather than formal written advice is provided when the requestor has questions concerning his or her duties, but no specific government decision is pending. (See Cal. Code Regs., tit. 2, §18329, subd. (b)(8)(D).)

Formal advice is identified by the file number beginning with an “A,” while informal assistance is identified by the letter “I.”

Proposition 208 Largely Supplanted by Proposition 34

Proposition 34 repealed most of the provisions of Proposition 208, including all but two of the requirements at issue in the federal court challenge that led up to the 1998 injunction of Proposition 208. Recognizing this effect of Proposition 34, the federal court signed an order lifting the injunction of Proposition 208 effective January 1, 2001, the date on which Proposition 34 came into effect. As of the new year, twelve provisions of Proposition 208 became effective (principally, advertising disclosure requirements not challenged in the federal lawsuit and not repealed by Proposition 34). Two provisions of

Proposition 208 which were not repealed by the new measure,

but which were challenged in court (involving slate mail disclosure issues) remained under preliminary injunction. The trial court issued its final judgment on those two provisions on March 1, 2001, adjudicating the complaint of the slate mail plaintiffs and permanently enjoining Sections 84305.5 and 84503. On March 12, 2001, the Commission filed with the trial court a motion requesting that the court alter and amend its judgment to provide that the court’s judgment did not apply to Section 84305.5 as it existed prior to Proposition 208, and to further provide that Section 84503 is unconstitutional only as applied to slate mailers.

On May 8, 2001, Judge Karlton issued an order specifying that the court had only ruled on the constitutionality of § 84305.5 insofar as it was amended by Proposition 208, and had only ruled § 84503 unconstitutional as applied to slate mailers.

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Campaign

Richard L. Poland
City of Long Beach
Dated July 3, 2001
Our File Number: A-01-123

Payment by a candidate for a local office yellow page ad for his private business which contained language aimed at influencing voters to support his candidacy is a campaign expenditure and must be paid for from the candidate's campaign bank account.

Diane Guyon
El Dorado County Elections Dept.
Dated July 23, 2001
Our File Number: I-01-174

The County of El Dorado is holding a ballot measure election on August 7, 2001, for the purpose of issuing bonds for a new recreational community center for the Cameron Park Community Services District (Measure C). This letter advises that any committees formed prior to June 30, 2001, may combine the semi-annual statement with the second pre-election statement. The combined statement must be filed no later than July 26, 2001.

Conflicts of Interest

John A. Shupe
Foothill DeAnza Community
College District
Dated July 5, 2001
Our File Number: I-01-089

A public official may provide paid consultant services to an entity if the official recuses him or herself and does not make, participate in making or use or attempt to use his or her official position to influence any governmental decision where it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the entity. The official should look to the language in his or her agency's conflict of interest code and the official's disclosure category to determine whether a source of income of \$500 or more must be disclosed on the official's Statement of Economic Interests.

Charles T. Kilian, City Attorney
City of Cupertino
Dated July 17, 2001
Our File Number: A-01-142

A commissioner for City of Cupertino Parks and Recreation Commission may not participate in proceedings related to a sports center development that is within 500 feet of a condominium that she owns. The commissioner has a conflict of interest based on her real property interest.

Richard R. Terzian
Rolling Hills Estates City
Council
Dated July 31, 2001
Our File Number: I-01-155

This letter discusses conflicts of interest in the context of an economic interest both as a board member of a private club and as a member having an investment in a "for-profit" business entity. The city council member has a conflict of interest in participating in development decisions due to her status as a club director as well as her membership interest in the club.

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Kathleen J. Patterson
Chino Planning Commission
Dated July 31, 2001
Our File Number I-01-179

A member of a city planning commission may not participate in decisions pertaining to development of land belonging to the commissioner's employer. Some decisions regarding the city's general plan, however, may be segregated from decisions with which the official has a conflict. Thus, the letter discusses segmentation of decisions as well as general conflicts analysis.

Lobbying

Steven G. Churchwell
Livingston and Mattesich
Dated July 27, 2001
Our File Number: I-01-115

A lobbying firm wishes to make contributions to legislative and other candidates. The firm has established a committee of three non-lobbyists, each a principal in the firm, to make all contribution decisions for the firm, with recommendations from any attorney in the firm, including the lobbyists. This letter concluded that under these facts the firm is not prohibited by Section 85702, the prohibition on lobbyist contributions to persons they lobby, from doing so.